

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;
Ann C. Fisher, Vice Chairman;
Mark Acton;
Ashley E. Poling; and
Robert G. Taub

Competitive Product Prices
Priority Mail & First-Class Package Service Contracts
Priority Mail & First-Class Package Service Contract 200

Docket No. MC2021-115

Competitive Product Prices
Priority Mail & First-Class Package Service Contract 200
(MC2021-115)
Negotiated Service Agreements

Docket No. CP2021-117

ORDER DENYING THE STRATEGIC ORGANIZING CENTER'S SUPPLEMENTAL
SUBMISSION AND GRANTING THE POSTAL SERVICE'S MOTION FOR
CLARIFICATION

(Issued September 29, 2022)

I. INTRODUCTION

On August 5, 2022, the Strategic Organizing Center (SOC) filed a supplemental submission regarding its motion for access to non-public materials.¹ For the reasons discussed below, the Commission denies the SOC Supplemental Submission because

¹ Supplemental Submission Regarding Motion Requesting Access to Non-Public Materials Under Protective Conditions, August 5, 2022 (SOC Supplemental Submission).

it is unauthorized, procedurally deficient, and improper, and because the underlying issues are now moot given that SOC filed a corrective motion for access in a different set of dockets. Additionally, the Commission grants the Postal Service's motion for clarification, filed on August 12, 2022, as described below.²

II. PROCEDURAL HISTORY

On May 12, 2022, SOC filed a motion requesting access to the "unredacted versions of the negotiated service agreement [(NSA)] currently in effect between the Postal Service and Amazon, and of the supporting Governor's Decision."³ Upon information and belief, SOC identified Shipping Services Priority Mail & First-Class Package Service Contract 200 (Contract 200) as the relevant NSA. SOC Motion at 1. SOC requested access to Contract 200 as well as the supporting Governor's Decision "for its counsel so that SOC may investigate and initiate a complaint before the Commission" pursuant to 39 U.S.C. § 3662. *Id.* at 2.

On May 18, 2022, the Postal Service filed a response in opposition to the SOC Motion and urged the Commission to deny the motion with prejudice.⁴ On May 19, 2022, the Package Shippers Association also filed a response in opposition, requesting that the Commission deny the motion.⁵

On June 6, 2022, the Commission determined that SOC failed to satisfy the relevance requirement of 39 C.F.R. § 3011.301(b)(2)(ii) as Contract 200 and the

² USPS Response to Strategic Organizing Center Supplemental Submission and Motion for Clarification, August 12, 2022 (Postal Service Response and Motion).

³ Docket No. CP2021-117, Strategic Organizing Center's Motion Requesting Access to Non-Public Materials Under Protective Conditions, May 12, 2022, at 1 (SOC Motion).

⁴ Response of the United States Postal Service in Opposition to Motion for Access to Non-Public Materials, May 18, 2022, at 1, 4 (Postal Service Response).

⁵ Response of the Package Shippers Association in Opposition to Motion for Access to Non-Public Materials, May 19, 2022, at 1-2 (PSA Response).

supporting Governor's Decision are not relevant to the allegations SOC anticipates it would make in a potential complaint proceeding.⁶ However, considerations discussed in the Commission's 2018 rulemaking process, during which 39 C.F.R.

§ 3011.301(b)(2)(ii) was added, led the Commission to determine to deny the SOC Motion "without prejudice to SOC refiling a request for access to non-public materials in the appropriate docket(s) at least 7 calendar days after filing of a joint statement by SOC and the Postal Service." See Order No. 6189 at 9-12. The Commission also determined to hold Docket Nos. MC2021-115 and CP2021-117 in abeyance pending the filing of a joint statement by SOC and the Postal Service within 60 days of the date of issuance of Order No. 6189, after SOC's counsel meet and confer with the Postal Service's counsel in a good faith effort to narrow or resolve disputed issues and clarify the parties' positions on any issues they cannot resolve. *Id.* at 12-13.

On August 5, 2022, SOC and the Postal Service filed a joint statement, stating that they were unable to narrow or resolve disputed issues despite efforts by both parties during the meet-and-confer process.⁷ SOC stated that it now believes the NSA contract relevant to its potential complaint is "Parcel Select Contract 44, filed in Docket Nos. MC2021-42 and CP2021-43" (Contract 44). Joint Statement at 2.

On the same day, SOC also filed a supplemental submission regarding its motion for access to non-public materials and requested the Commission to grant its motion. SOC Supplemental Submission at 1.

On August 12, 2022, the Postal Service filed a response in opposition to the SOC Supplemental Submission and a motion for clarification. Postal Service Response and Motion.

⁶ Order Denying Motion for Access Without Prejudice and Holding Proceedings in Abeyance Pending Filing of Joint Statement, June 6, 2022, at 9 (Order No. 6189).

⁷ Joint Statement of the United States Postal Service and the Strategic Organizing Center Pursuant to PRC Order 6189, August 5, 2022, at 2-5 (Joint Statement).

III. POSITIONS OF THE PARTIES

A. SOC Supplemental Submission

SOC argues that the Commission should “immediately” grant its motion for access because the Postal Service has allegedly “effectively waived its right to object to the release of the non-public information” by refusing to release non-public information to SOC during the meet-and-confer process. See SOC Supplemental Submission at 1-2; *see also id.* at 6-10. SOC claims that it is entitled to access to the relevant NSA contract, which it states is “Parcel Select Contract 44, filed in Docket Nos. MC2021-42 and CP2021-43” and further confirms that “in requesting immediate access to the relevant NSA between USPS and Amazon, SOC means to request Parcel Select Contract 44 and the accompanying Governor’s Decision.” *Id.* at 5-6.

B. Postal Service Response and Motion

The Postal Service requests that the Commission decline to consider the SOC Supplemental Submission because the submission and the requests made therein are inconsistent with the instructions contained in Order No. 6189 and are not otherwise authorized by the Commission’s rules. See Postal Service Response and Motion at 1. Specifically, the Postal Service states that Order No. 6189 determined as a threshold matter that the materials in the instant dockets have no relevance to SOC’s allegations, and instructed SOC that it may refile a request for access to non-public materials in the appropriate docket(s) at least 7 calendar days after filing the joint statement. *Id.* at 3. The Postal Service argues that, as a result, SOC failed to follow the instructions in Order No. 6189 because it filed its supplemental submission in the incorrect dockets, and also because it filed it on the same day as the Joint Statement instead of at least 7 calendar days after the filing of the Joint Statement. *Id.* In addition, the Postal Service argues that SOC failed to satisfy the relevance requirements of 39 C.F.R. § 3011.301(b)(2)(ii) again. *Id.* Furthermore, the Postal Service argues that although

SOC styles its filing as a supplemental submission, it is “effectively a renewed motion in reply” to the original Postal Service Response, which is in contravention of 39 C.F.R. § 3011.301(d) stating that “no reply to a response shall be filed, unless the Commission otherwise provides.” *Id.* (quoting 39 C.F.R. § 3011.301(d)).

In addition, the Postal Service requests that the Commission clarify the procedural posture of these proceedings so that parties can participate appropriately and meaningfully. See Postal Service Response and Motion at 4. Specifically, the Postal Service argues that Order No. 6189 suggests that SOC is required to refile its motion in the appropriate docket(s), thus giving interested parties opportunity to respond therein. *Id.* The Postal Service states that it “has reason to believe that other potentially interested parties in the parcel shipping market will seek to respond to SOC’s Motion once it is filed in the appropriate docket” *Id.* at 5. The Postal Service further points out that “this ongoing motions practice in the instant dockets unnecessarily involves an irrelevant party to the dispute at hand.” *Id.*

IV. COMMISSION ANALYSIS

The Commission finds that SOC failed to comply with Order No. 6189. Specifically, in Order No. 6189, the Commission found that Contract 200 and the supporting Governor’s Decision in the instant dockets have no relevance to the allegations SOC anticipates it would make in the proposed proceeding before the Commission, and SOC thus failed to satisfy the relevance requirement of 39 C.F.R. § 3011.301(b)(2)(ii). Order No. 6189 at 9. The order instructed SOC to meet and confer with the Postal Service so that parties can make good faith efforts to narrow or resolve disputed issues regarding SOC’s motion for access. *Id.* at 12. The order further instructed SOC and the Postal Service to file a joint statement after the meet-and-confer, within 60 days of the date of issuance of the order. *Id.* Finally, the order

instructed SOC to refile any motion for access to non-public materials in the appropriate docket(s) at least 7 calendar days after filing the joint statement. *Id.* at 14.

Contrary to the instructions in Order No. 6189, SOC filed the supplemental submission on the same day that parties filed the joint statement, instead of waiting at least 7 calendar days. Moreover, SOC filed the supplemental submission, which is effectively a renewed motion for access, in the instant dockets instead of the appropriate docket(s). As SOC states in its supplemental submission, it now believes the NSA relevant to its potential complaint is “Parcel Select Contract 44, filed in Docket Nos. MC2021-42 and CP2021-43.” SOC Supplemental Submission at 5-6. Therefore, not only did SOC fail to comply with Order No. 6189 by filing its supplemental submission in the instant dockets instead of Docket Nos. MC2021-42 and CP2021-43, but it also failed to satisfy the relevance requirement of 39 C.F.R. § 3011.301(b)(2)(ii) again. Finally, 39 C.F.R. § 3011.301(d) provides that “[n]o reply to a response shall be filed, unless the Commission otherwise provides.” 39 C.F.R. § 3011.301(d). The Commission did not provide parties with any opportunity to file replies to responses, not in Order No. 6189 or elsewhere in the instant dockets. In so far as the SOC Supplemental Submission contains any reply to the original Postal Service Response, it is also in contravention of 39 C.F.R. § 3011.301(d). For the reasons discussed above, the Commission denies the SOC Supplemental Submission because it is unauthorized, procedurally deficient, and improper.

The Commission notes, however, that SOC subsequently filed a corrective motion for access in the appropriate dockets, *i.e.*, Docket Nos. MC2021-42 and CP2021-43.⁸ Therefore, the underlying issues in the SOC Supplemental Submission are now moot.

⁸ See Docket Nos. MC2021-42 and CP2021-43, Motion by Strategic Organizing Center Requesting Access to Non-Public Materials Under Protective Conditions, August 17, 2022.

V. CONCLUSION

For the above reasons, the Commission denies the SOC Supplemental Submission as it is unauthorized, procedurally deficient, and improper. The Commission also notes that the underlying issues in the SOC Supplemental Submission are now moot given that SOC has filed a corrective motion for access in the appropriate Docket Nos. MC2021-42 and CP2021-43. Finally, the Commission grants the Postal Service's motion for clarification.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Supplemental Submission Regarding Motion Requesting Access to Non-Public Materials Under Protective Conditions, filed by the Strategic Organizing Center on August 5, 2022, is denied.
2. The motion for clarification, filed by the Postal Service on August 12, 2022, is granted.

By the Commission.

Erica A. Barker
Secretary